(1954) 08 CAL CK 0038

Calcutta High Court

Case No: None

Province of West Bengal		APPELLANT
	Vs	
Raja of Hargram		RESPONDENT

Date of Decision: Aug. 24, 1954

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 23, 23(1)

Citation: 60 CWN 185

Hon'ble Judges: Renupada Mukherjee, J; Mookerjee, J

Bench: Division Bench

Advocate: Jajneswar Majumdar, for the Appellant;Atul Chandra Gupta, Purnendu Sekhar Basu and Nitya Ranjan Biswas, for the Respondent

Final Decision: Allowed

Judgement

Mookerjee, J.

The principal question for decision in the present appeal is whether the principle of reinstatement would be attracted in assessing the compensation payable for damages done to a forest during requisition. During the last War portions of two Khas Jungles known as Bandhi Jungle and Chua Jungle belonging to the Raja of Jhargram were requisitioned under Rule 75A of the Defence of India Rules for the Jhargram Air-field. The property remained under requisition from the 15th May, 1944, to the 3rd of May 1945 when it was derequisitioned. On such derequisition it transpired that during the period of occupation Government had removed standing trees from a large portion of the area. Correspondence ensued and the District Magistrate of Midnapore offered by his letter dated 31st January, 1946, a total compensation for Rs. 1,21.449-2-0. One year later by a letter dated 12th February, 1947, the District Magistrate modified the offer and reduced the same to Rs. 38,377-1-0. It was stated that out of the amount offered Rs. 1,968-12-0 had already been paid for tree-cutting in the year 1944. On behalf of the claimant the offer was not accepted. Accordingly u/s 19(1) of the Defence of India Act, 1939, (XXXV of 1939)

the question of compensation was referred to an arbitrator.

2. On behalf of the claimant Rs. 4.55,483-14-0 was claimed as compensation. It will be necessary hereafter to give further details as to the different heads under which the claimant had preferred his claim.

3. It is an admitted fact that the total area requisitioned was 362.82 acres During the period of requisition trees standing on 257.31 acres had been uprooted and on the remaining area of 105.51 acres some of the trees had been cut down.

4. On behalf of the claimant it was contended that the damage that had been done to the forest was such that; steps would have to be taken for new afforestation. It would take about 25 years for the new forest to grow and the loss of income during that period should be compensated. The compensation for the trees that had been removed but which would not ordinarily be removed from a forest would also have to be paid for. A separate claim was made for one outurn of the fuel plants.

5. Evidence was adduced by both the parties before the Arbitrator and the Arbitrator had allowed Rs. 3,28,325-14-0 as compensation, following practically the scheme as put forward on behalf of the claimant, though the amounts claimed were not the entire claim as made by him.

6. The State of West Bengal has come up on appeal. It was contended in the lower court and repeated in this Court also on behalf of the appellant that the proper compensation was Rs. 38,000 and odd as had been offered by the District Magistrate of Midnapore in February, 1947.

7. We may state at the very outset that both the parties as also the Arbitrator had not proceeded on proper lines in assessing the compensation.

8. When a property is compulsorily acquired the compensation payable is the market value of the property acquired together with such claims as may be admissible for costs of removal, severance, etc. If a property is requisitioned for a certain period, the requisitioning authority is bound to pay such compensation as may be deemed reasonable for the period of requisition. If at the time of derequisition it is found that there had been damages inflicted during the period of requisition and the property returned is not in the same condition as it was when requisitioned, Government is liable for what is technically known as terminal damages.

9. Province of Bengal v Trustees for Improvement, Calcutta (1) (50 C.W.N. 825) has laid down on what basis compensation is to be assessed for the period of requisition. The requisitioning authority gets possession from the owner and becomes so to say a statutory tenant. The basis of compensation is the amount of fair rent. Find out, if possible what a plot of land with similar advantages and disadvantages would yield if let out. If there be no such comparable example as it turned out in the decision referred to we have to turn to other evidence available.

Determine the market-value of the land in question. Calculate having due regard to the nature of the property the fair percentage of return. On the facts of that case 5 per cent., including the owner''s share of Municipal rates, if any, was considered to be a fair percentage of returns.

10. If the property itself was being let out and such letting out was a bona-fide one, evidence of such letting value will be relevant.

11. In assessing the compensation the first item will be what is considered to be the fair rental value for the period under requisition.

12. Neither the parties nor the Arbitrator appear to have determined the compensation on that footing.

14. The position has however been greatly complicated by the admitted fact that over a large area trees have either been uprooted or cut down. How is compensation for such damage to be ascertained ? As already stated the) claimant maintained that because of the peculiar nature of the property and that a Sal forest did not grow in that area without methods of forestry being adopted the compensation payable should be assessed on the basis of reinstatement. Evidence was produced in the lower Court by the parties as to the possibility and practicability of rearing a new forest on the affected portion, the time to be taken to grow the new trees so as to be productive of normal and regular forest income.

15. The claim for compensation was made on behalf of the claimant under the following heads-

(1) Value or one outturn of the fuel plants which had been standing on 362.82 acres and had been removed during requisition Rupees 68,731

(2) As trees have been totally uprooted from 257.31 acres, afforestations would have to be made- -which would cost.

Rupees 1,63,550 14

(3) As it will take 25 years for the trees to grow and be mature enough to be utilised as a forest ready to be leased out for periodical cutting the claimant will lose the income from the forest for that period. The loss of such income will have to be compensated which is Rupees 1,96,002

(4) Compensation for the removal of the mother Sal trees and the fruit bearing trees- which are not ordinarily removed from a forest but had been cut down during requisition... 27,200

Total Rs. .. 4,55,483 14

16. The different heads under which the learned Arbitrator has granted compensation are-

(i) Compensation for the fuel trees. Rupees 19,291

(ii) For afforestation under certain sub-heads. Rupees.... 1,49,750 14

(iii) Compensation for loss of income for 20 years by which time the new forest will be ready. Rupees.... 1,47,600

(iv) Compensation for the removal of mother sal trees, etc. Rupees 11,684

Total Rs. .. 3,28,325 14

17. The procedure followed by the learned Arbitrator is somewhat unusual not contemplated under either section 19 of the Defence of India Act or section 23(1) of the Land Acquisition Act. While determining the amount stated above he proceeded on the basis that the principle that while determining the market-value of a property amongst other things it is the potential value that its value for the future purposes is to be considered, applies with equal force in the case of determining the compensation for requisitioned properties.

18. As indicated already the basis for compensation for a limited period when the property is under requisition was explained by R.C. Mitter, J., in the Province of Bengal v. Trustees for Improvement, Calcutta, (1) (50 C.W.N. 825). It is surprising that the learned Arbitrator quotes a passage from that judgment but it is not correct in its application. The compensation is to be determined for the period the property is in the occupation of the Military Authorities. The compensation for the damage done is to be assessed separately. This the learned Arbitrator has failed to appreciate.

19. Learned Arbitrator has also been in error so far as the question of onus in proving the amount of compensation is concerned in a compulsory acquisition or requisition under the Defence of India Rules.

20. The State had not appreciated in this case as in certain other cases as well as to the duty cast upon the State when the matter is before the Arbitrator. This is fundamentally different from what is provided under the Land Acquisition Act.

21. When land is acquired under the provisions of the Land Acquisition Act. the Land Acquisition Collector after giving notice to the persons interested and making enquiries into the measurement, value and claims makes the award u/s 11 of the said Act. The compensation so fixed is binding on the Government. Any person interested who does not accept the award may require the Land Acquisition Collector to make a reference u/s 18 of the said Act and the question of valuation is referred for determination by the Court, the Land Acquisition Judge. When a reference is before the Judge the burden is on the claimant referee to establish by adducing necessary evidence that the valuation as made by the Collector was low and insufficient. No doubt when no evidence had been taken by the Collector or if no reasons had been given by the Collector in his award to support the conclusion

the burden on the claimant referee is a very light one to be discharged.

22. The position however when the land is acquired or requisitioned u/s 19 of the Defence of India Act is altogether different. The manner in which and the principles under which compensation is to be determined are set out in the different clauses of section 19 of the Defence of India Act. When the amount of compensation is agreed upon between the claimant and the acquiring authority the compensation is to be paid in accordance with such agreement. When the Land Acquisition Collector is acting on behalf of the requisition authority and makes the offer to the claimant he is acting u/s 19 of the Defence of India Act and the rules thereunder.

23. u/s (b) of sub-section 1 of section 19 "where no such agreement can be reached the Central Government shall appoint as arbitrator a person qualified" under certain provisions of the Government of India Act, 1935. The entire matter goes before the arbitrator for his decision.

24. Under Clause (d) of sub-section 1 of section 19 "at the commencement of the proceedings before the arbitrator the Central Government and the person to be compensated shall state what in their respective opinion is the fair amount of compensation."

25. The only other provision is contained in Clause (e) of sub-section 1 of section 19 of that Act whereby an arbitrator in making his award shall have regard to the provision of subsection 1 of section 23 of the Land Acquisition Act so far as the same can be made applicable.

26. During the hearing before the arbitrator both the parties are required to adduce necessary and relevant materials so as to assist the arbitrator in determining what the fair compensation should be. There is no question of the offer which had been made by the Collector being binding or the onus being placed on the claimant to prove by evidence aliuendi that the offer made by the Collector was not a proper one.

27. Under the Land Acquisition Act the Land Acquisition Collector makes the award which is of a binding character unless the claimant or party interested makes a reference. Whereas in the case of an acquisition u/s 19 of the Defence of India Act there are negotiations between the Collector and the claimant and what the Collector does is to make the offer which is not binding unless the claimant accepts the same and finality is reached.

28. This being the correct position and the learned arbitrator having overlooked the intrinsic difference between the proceedings under the Land Acquisition Act and those under the Defence of India Act, he thought that that which had been offered by the Collector or the amount which had at one stage been mentioned by the Government Pleader as in his opinion a fair amount of compensation was to be binding unless a contrary view is made out by evidence. The learned arbitrator went

so far as to observe that the opposite party State must prove by cogent evidence that the earlier offer which had been made on behalf of the Government, viz., Rs. 1,21,000 and odd was wrong. The approach by the learned arbitrator has therefore not been a correct one.

29. It has been argued before us on behalf of the appellant State that before the Court proceeds to consider what costs would be incurred for afforestation it is necessary to decide whether in the facts of the present case the Court will be entitled to introduce the principle of reinstatement and only if the answer be in the affirmative that an enquiry as to the costs of afforestation will be necessary.

30. We may at this stage consider the circumstances under which the principle of reinstatement may be applied. Halsbury (Hailsham Edn. Vol. VI. page 45) enunciates the proposition in the following manner:

When the land is used for some particular purpose not of a commercial nature, such as for a public Park or for a Church or School, it is very difficult to estimate the loss One method adopted is that known as reinstatement, by which is meant that the amount of compensation to be awarded shall be assessed according to the cost of acquiring an equally convenient site and erecting an equally convenient premises.

31. Cripps on Compulsory Acquisition of Land, 9th Edition at page 502, formulates the proposition in the following terms :

There are some cases in which the income derived or probably to be derived from land would not constitute a fair basis in assessing the value of the owner, and then the principle of reinstatement should be applied. This principle is that the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or the lands which would be to him of the same value. It is not possible to give an exhaustive catalogue of all the cases to which the principle of reinstatement is applicable. But we may instance Churches, Schools, Hospitals, houses of exceptional character, and business premises in which the business can only be carried on under special condition or by means of special licenses.

32. The passage reproduced above was quoted from Cripps on Compensation, 5th Edition by the court of appeal in A and B Taxis, Ltd., v. The Secretary of State for Air, (2) (1922) 2 K.B. 328 at 336 and Bankes, L.J., observed (at page 337):

It must depend on the facts whether in a particular ease the principles of reinstatement as stated apply; and the material consideration would seem to be first the nature of the business which is to be displaced; it would be unreasonable to incur great expenses in reinstating the business which can only be carried on at a loss; secondly the time during which the business is to he displaced; if the time was very short it might be unreasonable to incur any expenses in reinstating it. But if he were not reasonable to shut up the business and claim compensation on the foot of

its total destruction if the reasonable course were to keep it alive by transplanting it elsewhere then the next question would be, was it reasonable for the proprietor to take the premises he took and incur the expenses he incurred in adapting them to the requirements of the business ?

33. On the facts the court of appeal held that the appellant claimants in that case had been able to establish that they were entitled to have compensation on the footing of reinstatement. The claimants in that case carried on business as motor garage proprietors and the extensive premises properly equipped had been peculiarly well suited for their purpose.

34. These premises were requisitioned during the first Great War. The claimant having tried and failed to acquire a substitute premises temporarily bought another premises, fitted them for use as a garage and transferred there the appliances of their business. When the original premises were restored to the owner the latter sold the substitute premises. They claimed a difference between the amounts they had expended in acquiring the substituted premises and for fitting them up and the sum they received on the sale of that substituted premises.

35. When this principle of reinstatement was attempted to be extended to a case in which a portion of a public garden had been compulsorily acquired, each a contention was repelled by Lord Shand In the matter of arbitration between the Corporation of Edinburgh and the North British Railway (3) (Cripps on Compulsory Acquisition of Land, 9th Edition. Vol. II. Appendix 4, page 1817). Lord Shand observed (see page 1818):

I have had no difficulty in holding that the principle of fixing the compensation payable by the Company on the basis of reinstatement is quite inapplicable to the circumstances of the case. Whereas a Church or Public Building or business premises are taken or so seriously interfered with by a Railway Co. that they can no-longer be properly used for the purpose for which they were erected or occupied, the cost of reinstatement is, generally speaking, a fair mode of fixing the compensation due. Even in that case it had never been held that the sum payable is to be taken on the footing that immediately contiguous ground must be substituted as the site for new buildings, and the cost of this paid for, though it may involve the purchase and removal of other buildings, however valuable such contiguous grounds. In such cases the cost of reinstatement is given by taking the most suitable and convenient ground which can be obtained without imposing any such extra-ordinary condition as that of purchasing adjacent ground, however, great its value, and though already covered with expensive buildings."

36. The principles above-mentioned has in recent times been given statutory recognition in Acquisition of Land (Assessment of Compensation) Act, 1019 and 10 Geo. V.C. 57, section 2, rule (5) and in War Damage Act, 1943, 6 and 7 Geo. VI C. 21, section 8(2). For the application of such principles under the two statutes

above-mentioned reference may respectively be made to Ashton Charities Trust Ltd. v. Stepney-Borough Council (4) (1952) 2 All E.R. 228 : (1952) 2 Q.B. 642 and to Lidle v. War Damage Commission (5) (1949) L.J.R. 1069.

37. The tests which should be applied for introducing the principle of reinstatement are that the income derived from the premises acquired would not in the special circumstances of the case constitute a fair basis in assessing the value to the owner. This is because of the special character of the use to which the premises had been put to at the time of the acquisition. It is the nature of the business which is to be displaced that requires the first consideration. Secondly there must be a bona fide intention to be reinstated and thirdly the costs of reinstatement are not unreasonably abnormal or have no relation to the market value of the property under acquisition.

38. There is no occasion for applying the principle of reinstatement in a case on a problematical calculation of estimated loss for a quarter or a fifth of a century and in attempting to provide for reinstatement where such reinstatmeent is either not feasible or there may be reasonable doubt whether it is practicable at all to provide for reinstatement.

39. The proposition of reinstatement was considered in this Court in Barada Prasad De, Chairman, Serampore Municipality v. Secretary of State for India in Council, (6) (25 C.W.N. 677). The Court was called upon in that case) to assess the market-value of a piece of.land over which there was a municipal drain and which had been acquired by the Government for public purposes as the drain was used at the time of the acquisition by the Serampore Municipality for discharge of water from the locality into the river Hooghly. The lower Court had valued the small piece of land little over one cuttah at the same rate as the adjoining land in as much as the drain was a shallow one. On behalf of the Municipality it was claimed that for two culverts over a new drain which would have to be constructed in place of the drain acquired which was an important outfall the costs for the construction of such culverts should be included within the compensation. The compensation awarded by the lower Court was deemed to be inadequate by taking the ""aid of an important principle which had been felicitously though perhaps not accurately, called the principle of reinstatement". Reference was made both to Burrows case and to Lord Shand''s opinion in the Edinburgh''s case for limiting.
The applicability of the doctrine being restricted to cases in which the lands for reinstatement is available or can be obtained on reasonable terms and consequently an attempt to extend the principle to the case of acquisition of a portion of a public garden proved unsuccessful.

40. Additional compensation was allowed in that case both by treating the matter as governed by the principle of reinstatement as also from the point of view of its special adaptability as a public drain.

41. We shall now proceed to consider the evidence adduced in the present case as also the manner in which the quantum of compensation has been determined for applying the principle of reinstatement.

The evidence as produced by the claimant in this case may be sub-divided into three groups-

(1) Possibility and necessity of afforestation in the Jhargram area.

(2) As to the income which accrued during certain years from portions of the jungles in question or other jungles.

(3) Estimates of costs for afforestation.

42. As regards the possibility and necessity of afforestation reference was made both in the lower Court as also by the Advocates appearing; before us to standard authorities on Forests like Troupe-Siviculture of Indian Forests, Reports by Government Committees as the (1) Stephenson Committee (1908) and (2) Bengal Forest Committee (1939). The experts examined also had referred to some of the standard authorities.

43. Jitendra K. Banerjee, P.W. 1, a forest supervisor of Jhargram Raj Estate said that he had tried afforestation in other places in Jhargram, but had not been successful. He had made estimates for afforestation which had failed. There is no afforested jungle in Jhargram.

44. Sachindranath Mitra, P.W. 10, who had passed from the Dehra-Dun College and retired the year previous (in 1947) as the Divisional Forest Officer, Sunder-ban Division and was acting as the Timber Adviser to Eastern Equipment and Stores Ltd., owned by Birla Brothers, has deposed as an Expert. He had inspected the forest in question for 2 days as a friend and not professionally. He was called to support the estimate and Report, dated the 5th March, 1947, already prepared by the claimant''s Forest Supervisor (Ex. 1) for afforestation. His experience in Europe and Africa was according to him of no help in the present cases. There was no Sal trees in Africa and Europe or in the Sundarbans. On an examination during a two days stay of the topography of Jhargram nature of the neighbouring forests, local conditions regarding supply of labour and water, climate and soil he proceeded to express his expert opinion. He had made notes which he did not preserve as also a report written by him is not produced. The opinion expressed by him except with regard to the physical condition of the locality is based either on information obtained, during his short stay, from the Estate Officers or on theories from standard works. The Chief stumbling block of propagating Sal seedlings in Jhargram is stated by him to be that the soil of Jhargram is a laterite one; Sal seeds mature at the end of May or in early June, the hottest part of the year but monsoon does not start before July. Sal seeds are extremely delicate and cannot stand any draught. The interval between the seed fall and the monsoon is too long. Seeds are generally collected in the

morning and sown the same day. Accordingly if "the usual procedure of afforestation has to be followed, the soil has to be loosened by ploughing, or hoeing, the area has to be fenced for protection against pigs and porcupines, provision is to be made for watering before monsoon and crop has to be protected before it is fully established.

45. Nurse plant has to be put in to provide shade for the Sal plants. Constant supervision must be arranged. It must be trained and skilled supervision". He doubts "Whether Sal trees would be well established here even in 20 years. These get well established in 15 years in North Bengal. So I provide for extra 5 years; without experiment it is difficult to say definitely how many years the Sal trees would take to get established here. In my opinion they would not take less than 20 years".

46. Such evidence of the feasibility of artificial afforestation in Jhargram is not only meagre but in addition there is a ring of the whole scheme being merely an experimental one. No such afforestation has been successful in the Jhargram area. The laterite character of the soil and absence of showers at the time when the Sal seeds mature and have to be sown introduce a picture of unreality in the whole scheme.

47. The series of correspondence that passed between the officers of the claimant and the representatives disclose the quantum of compensation claimed for afforestation. Such estimates were prepared in the first instance of the Estate Forest Officer, attempted to be supported at the last moment when the suit was being heard by calling an expert, who as stated already visited the forest as a friend for two days.

48. That the principle of reinstatement is "only applicable where the land for reinstatement is available or can be obtained on reasonable terms" finds a place in Halsbury, Volume 6, page 45 after the passage which has already been quoted at an earlier part of this judgment.

49. One of the essential points for enquiry therefore before the principle of reinstatement is applied is whether reinstatement is possible on reasonable terms. The matter in which the calculation for costs for afforestation can be done and the long period over which steps are required to be taken to bring back if it is possible at all to the conditions in which the forest was at the time of requisition make it abundantly clear that the terms and conditions under which reinstatement would have to be allowed would be not only in terms wholly unreasonable but would be a speculative one and merely a wishful thinking.

50. The other test which should be applied before compensation is calculated on the basis of reinstatement is that on the ground of intrinsic reasons reinstatement becomes necessary and the claimant is reasonably anxious to take advantage of such reinstatement. From this aspect also it will be seen when reference already

made to the evidence in the instant case will conclusively show that the present claimant has not taken any step during a long period to start afforestation in the property in suit. On the other hand evidence discloses that the land was being used in some parts at least for raising crops or for other cultivations. There is no evidence on the record from which it can be deduced that the claimant in the present case really wanted or wants the forest to be grown again.

51. Compensation on the basis of reinstatement should not be allowed unless such tests are satisfied. On behalf of the State it had been argued that the compensation on the basis of reinstatement as allowed by the learned arbitrator prima facie gave compensation far in excess of the value of the property, the forest, even if it had been acquired and not merely requisitioned. What the market-value of the property would have been on the relevant date cannot be ascertained from the materials on the record but prima facie the learned Arbitrator has allowed compensation for 20 years loss of income as also costs of afforestation and compensation on other times. Ordinarily 20 times the annual income is a very fair market value of the property on) the income basis. From this standard the compensation allowed by the learned arbitrator may be characterised as on the face of it exorbitant when compared with the average annual income as assessed by the arbitrator.

52. On a consideration of the evidence as adduced to which reference has already been made we must hold that on the facts of this present case the principle of reinstatement cannot be attracted.

53. The question therefore is on what basis the compensation is to be assessed. The claimant is entitled to the fair income which would have accrued to him during the period when the property was under requisition, viz., from the 15th May, 1944, to the 3rd May, 1945. He is also entitled to the; damages which had been inflicted during the period of requisition. It has been suggested that the value of the trees which had been removed or uprooted would be the fair compensation. We do not think that such a valuation would be fair in the circumstances of this case or because of the special nature of the property in question. The extent to which the income from the forest has been affected by the depredation multiplied by a certain number of years may be a method to be considered.

54. The result therefore is that the appeal is allowed and judgment and decree passed by the learned arbitrator are set aside and it be declared that the claimant is entitled to (1) compensation for the fuel trees removed.....Rs. 19,291/-.

Compensation for the removal of mother sal trees, etc... Rs. 11,684/-.

Compensation for the loss of income for 20 years including the year during which the property was under requisition at the rate as fixed by the learned arbitrator, compensating thereby damages for the trees cut or uprooted..... Rs. 1,47,600/-

Total Rupees 1,78,575/-

55. So far as the question of costs is concerned we direct that each party will bear its respective costs of this Court inasmuch as the parties themselves were u/s 19 of the Defence of India Act and the Rules framed thereunder duty-bound to produce necessary materials before the Arbitrator for fixing the fair amount of compensation. The Government had not taken necessary steps in proper time for adducing such materials before the Arbitrator and the Arbitrator was not assisted by bringing before him the correct legal position in this case. Under such circumstances we direct that the parties will bear their own costs in this Court.

Renupada Mukherjee, J.

I agree.